

SPECIAL CIVIL APPLICATION No 4260 of 1990

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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- [illegible]

- SATYANARAYAN DHARMADAS AGRAWAL

DEPUTY COLLECTOR

MR BY MANKAD, AGP.for Respondent No. 1, 2, 3

Date of decision: 15/02/2000

The petitioner by registered sale-deed dated 25.5.1963 purchased land from one Naniyabhai Gavjibhai admeasuring 0.26 gunthas being part of survey no.154 of

Devgadhbaria. The mutation entry in the revenue record was certified on 11.12.1966 after issuing notice to the parties concerned. The petitioner also obtained permission from the Nagar Palika in 1981 for putting up construction on the said land. On 30.9.1982 the Deputy Collector issued notice to the petitioner as also to Naniyabhai Gavjibhai intimating them that the sale in question was in violation of Section 73A of the Land Revenue Code and they were called upon to show cause why it should not be cancelled. It appears that the petitioners in their reply raised a number of contentions. He contended that the sale had taken place more than 20 years ago and he had spent about Rs.10,000/- for carrying out improvement on the land. However, the Deputy Collector, Dahod negatived the contention and set aside the entry dated 10.11.1965 in purported exercise of review powers. The petitioner filed revision application before the Collector but the same was dismissed by the Collector by his order dated 28.3.1983. The order of the Collector was confirmed in revision by Additional Chief Secretary (Appeal) Revenue, by his order dated 1.6.1990.

The present petition under Article 227 of the Constitution is directed against the said orders cancelling the entry.

The learned Counsel for the petitioners advanced several contentions. He contended that the impugned orders were liable to be set aside since suo motu powers had not been exercised within reasonable time. He also contended that the Deputy Collector was not empowered to exercise suo motu revisional powers under sub-rule (6) of Rule 108 of the Land Revenue Rules. In my opinion, the petition deserves to be allowed on the second ground, since the said contention is supported by the decision of this Court dated 18.3.1999 in Special Civil Application No.6329 of 1986 (Coram : R.K.Abichandani,J). The learned Single Judge in para 4 of the said decision held as follows :

- "4. Rule 108(6) of the said Rules provides that the Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings and in any case, if it shall appear to him that any proceedings so

called for or any decision or order made in such proceedings should be modified, annulled or reversed, he shall pass such order thereon as he deemed fit.

It will thus, be seen that there is no reference to Deputy Collector exercising any suo-motu powers under sub-rule (6) of Rule 108 of the Rules. This aspect appears to have come up before the Government for its clarification and the Government, by its resolution dated 22nd July, 1992, have clarified that a Deputy Collector or an Assistant Collector, cannot exercise suo-motu revisional powers under Rule 108(6) of the Rules. This resolution was based on the opinion of the Legal Department of the Government, which had opined that no officer inferior in rank to the officer named in Rule 108(6) could exercise suo-motu revisional powers under that provision. Thus, even on the Government's own stand as reflected in the said resolution dated 22.7.1992, the Deputy Collector, Baroda could not have made an order by exercising suo-motu revisional powers under Rule 108(6) of the said Rules. The impugned order dated 28.8.1985 passed by the Deputy Collector is therefore, without jurisdiction...."

In the present case also the suo-motu revisional power has been exercised by the Deputy Collector and the ratio of the said decision is applicable to the facts of the present case. The impugned order of the Deputy Collector is therefore without jurisdiction. The petition is therefore allowed and the impugned orders of the Deputy Collector, the Collector and the Secretary (Appeal) revenue are set aside. Rule is made absolute accordingly with no order as to costs.

m.m.bhatt